

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Repeal of Chapter 15-168 and
Adoption of Chapter 15-313
Hawaii Administrative Rules

April 8, 2010

SUMMARY

1. Chapter 15-168, Hawaii Administrative Rules, entitled "Low Income Housing Tax Credit Program" is repealed.

2. Chapter 15-313, Hawaii Administrative Rules, entitled "Low Income Housing Tax Credit Program" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 313

LOW INCOME HOUSING TAX CREDIT PROGRAM

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Credits

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Credits

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Historical note: Chapter 313 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 168 of Title 15, Hawaii Administrative Rules, [Eff 10/25/99; R **APR 23 2010**], and Chapter 321 of Title 6, Hawaii Administrative Rules, [Eff 10/25/99; am and comp 7/26/91; R 10/25/99].

SUBCHAPTER 1

GENERAL PROVISIONS

§15-313-1 Purpose and preamble. These rules implement federal and state low income housing tax credit programs which offer a reduction in tax liability to owners of low income rental housing projects that are newly constructed, or acquired and rehabilitated. The corporation anticipates that applications for credit allocation will exceed the State's housing credit ceiling as well as the State's aggregate housing credit dollar amount. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15)

§15-313-2 Definitions. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

"Allocation plan" means the system of ranking and selection to determine which projects will be granted a reservation of tax credits.

"Application" means the application by prospective owners of low income rental housing projects for federal and state low income housing tax credits.

"Board" means the board of directors of the Hawaii housing finance and development corporation.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Corporation" means the Hawaii housing finance and development corporation established pursuant to chapter 201H, Hawaii Revised Statutes.

"Credits" means the low income housing tax credits as described in the Code or the HRS, as the case may be.

"Executive director" means the executive director of the corporation or the executive director's designated representative.

"Extended low income housing commitment" means a regulatory agreement between the corporation and owner as defined by the Code.

"Federal credit reservation" means a reservation of a portion of the federal low income housing tax credit ceiling or aggregate housing credit dollar amount for specific qualified low income housing units.

"Federal low income housing tax credits" or "federal tax credits" means the credits prescribed in the Code for application against federal income tax liability.

"HRS" means the Hawaii Revised Statutes, as amended, and the rules promulgated thereunder.

"Low income housing units" means a housing unit or units which meet the applicable requirements in section 42 of the Code or section 235-110.8, HRS, to qualify for the credits thereunder.

"Owner" means the owner or owners of low income housing units or investors in such units.

"Project" means a qualified low income housing project as that term is defined in section 42(g) of the Code.

"Qualified non-profit organization" means the same as defined in the Code, section 501(c)(3).

"State" means the State of Hawaii.

"State credit reservation" means a reservation of a portion of the state low income housing tax credit ceiling or aggregate housing credit dollar amount for specific qualified low income housing units.

"State housing needs assessment" means the housing study prepared to identify the geographic and demographic areas in greatest need.

"State low income housing tax credits" or "state tax credits" means the credits prescribed in section 235-110.8, HRS, for application against state income tax liability.

"Tax credit certificate" means a certificate issued by the corporation authorizing the owner to claim a tax credit in the tax credit amount specified on the certificate. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15)

§15-313-3 Powers of the executive director. (a)

The executive director may impose requirements, limitations, and conditions with respect to the submission of applications and the selection thereof which are deemed necessary or appropriate.

(b) The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available credits are to be allocated, and such other matters as shall be deemed appropriate and related to the reservation and the allocation of credits. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15)

SUBCHAPTER 2

FEDERAL LOW INCOME HOUSING TAX CREDITS

§15-313-5 Designation of corporation as housing credit agency. The corporation has been designated as the housing credit agency as defined in the Code and, in such capacity, shall allocate for each calendar year federal low income housing tax credits in accordance with the Code and this subchapter. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42; 52 Fed. Reg. 23433 §1.42-1T)

§15-313-6 Determination of State's federal tax credit ceiling. The State's federal housing tax credit ceiling for any calendar year shall be an amount equal to \$1.25 multiplied by the State's population as determined by the most recent census estimate (whether final or provisional) of the resident population of the State released by the United States Bureau of the Census before the beginning of the calendar year for which the State's housing credit ceiling is set plus any of the State's unused federal tax credit allocation from the previous year and any additional credits which may be allocated to the State from the Treasury Secretary; or such other amount as may be authorized by the Code as amended from time to time. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-7 General. (a) The aggregate amount of the federal tax credits (other than credits for developments financed with certain tax-exempt bonds) allocated in any calendar year within the State may not exceed the State's federal tax credit ceiling for that year.

(b) An amount equal to ten per cent of the State's federal tax credit ceiling shall be set aside for qualified nonprofit organizations. Upon the reservation or allocation of all credits initially set aside for nonprofit organizations, additional reservations or allocations of credits may be made to nonprofit organizations from the State's remaining allocation.

(c) Federal tax credit allocations shall be counted against the State's annual federal tax credit ceiling for the calendar year in which the credits are allocated.

(d) Credits may not be allocated before the calendar year in which the subject project is placed in service; however, the corporation may accept, review and approve applications for reservation of credits as provided in sections 15-313-8 to 15-313-10 subject to the satisfaction of certain terms and conditions.

(e) The amount of credits reserved or allocated to a project shall be limited to the amount that the corporation, in its sole discretion, deems necessary to make such project feasible. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(f) The corporation shall prepare and update not less than every three years, a state housing needs assessment to identify the housing needs existent at that time.

(g) The corporation shall develop and update not less than every three years, an allocation plan for distributing tax credits. The allocation plan and its method of development shall comply with requirements of the Code.

(h) The corporation shall enter into an extended low income housing commitment with the project owner as required by the Code. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-8 Application for federal credit reservation. (a) Applications on the prescribed forms will be accepted by the corporation and considered as they are received. Applications must be fully completed and contain information as required under this section and by the application.

(b) Application for a reservation of federal tax credits shall be commenced by filing with the corporation the following:

- (1) An application, on such form or forms as the executive director may prescribe;
- (2) To the extent available, certified copies of the organizational documents of the applicant, including its articles of incorporation and bylaws, declaration of trust, partnership or limited partnership agreement, together with all amendments thereto and, in the case of nonprofit organizations, a copy of the determination letter from the Internal Revenue Service as to recognition of exemption from federal income taxation. In any event, certified copies of the aforementioned documents must be received by the corporation prior to the issuance of a reservation commitment letter by the corporation;
- (3) A copy of the applicant's audited annual financial statement prepared in accordance with generally accepted accounting principles covering a period ended within twelve months of the date submitted. In the event the applicant is an entity not yet formed, the developer shall be required to submit federal tax returns and financial statements for the previous three years. The applicant must also submit any and all other financial information as requested by the executive director;

- (4) Evidence of site availability for the project, e.g., a deed, lease, agreement of sale, option agreement or similar document. In the event the applicant does not have site control or proper zoning, a plan and timetable for obtaining site control and proper zoning must be contained in the development schedule;
- (5) A proposed development timetable;
- (6) A description certified by the applicant of how the project qualifies for federal tax credits under the Code;
- (7) A pro forma calculation of the applicant's qualified basis and the amount of federal tax credits requested by the applicant, together with an opinion of a certified public accountant certifying that under the existing facts and circumstances the applicant will be eligible for such qualified basis;
- (8) A description of the experience of the applicant and its capacity to place the low income housing units in service in the allocation year;
- (9) A pro forma operating budget and information supporting the likelihood of meeting the compliance period set forth in the Code including the sources of funds that will allow the project to remain in compliance for the duration of the compliance period. In addition, a description of funds which will be available to the project in the event the project should operate at a deficit must be included;
- (10) Financial information relating to the project including a construction or development budget which sets forth, to the satisfaction of the corporation, the sources and the application of funds for development of the project, including the extent to which the applicant is "at risk" under the Code;

- (11) A covenant by the applicant in a form satisfactory to the executive director that should it be allocated the tax credits applied for that it shall maintain the applicable portion of the project as low income housing units for the statutory period;
- (12) A market analysis prepared by an independent firm as to the present and projected demand for the proposed development in the market area. Such marketing analysis shall include, but not be limited to, the estimated number of individuals or families in the area within the applicable income limits needing affordable housing and the comparable rental rates for the area; and
- (13) Any and all other information as shall be required by the application and requested by the executive director. Any information or materials submitted must be in form and substance satisfactory to the corporation in all respects.

(c) The low income housing units for which an application is submitted may, but are not required to be, financed, subsidized, or otherwise assisted by the corporation. If any such housing units are to be financed by the corporation, the application for such financing shall be separately submitted to and received by the corporation in accordance with its applicable procedures and guidelines.

(d) Upon the corporation's receipt of a fully completed application, the corporation shall notify the mayor of the county within which the proposed project is to be located. The corporation shall provide the mayor of each county with a thirty day period from the date of notification to comment on the project. [Eff 10/25/99; am and comp **APR 23 2010**]
 (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-9 Review of application. The corporation shall review each application and any additional information submitted by the applicant or obtained from other sources by the corporation in its review of each application. Additional information or data may be requested and the corporation may independently verify any or all information supplied by the applicant. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-10 Selection of application; reservation of credits. (a) Based on the review of the applications, documents, and any additional information submitted by the applicants or obtained from other sources by the corporation, the executive director shall make a determination as to the likelihood of the applicant being able to qualify for the credit under the Code and the corporation's allocation plan. The executive director shall then prepare a recommendation to the board for a reservation of federal tax credits for applications selected pursuant to the corporation's allocation plan. Applications which have not been selected by the executive director for recommendation to the board shall be deferred or denied, with such determination to be made solely by the executive director. Deferred applications shall remain active and applications denied shall be considered null and void as specified in subsection (e).

(b) In determining whether to recommend the selection of an application or applications, the executive director shall rely on a point-based ranking system which utilizes criteria established by the corporation's allocation plan.

(c) The board shall review the recommendation of the executive director for the reservation of federal tax credits, and, if the board determines that the project will contribute to the housing goals of the State, it may approve the application and authorize the executive director to reserve an appropriate amount of credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the Code and these rules. The board shall either approve, defer, or deny applications received no later than sixty days after an application is filed with required exhibits that is complete and satisfactory to the executive director.

(d) Upon the board's approval of a reservation of federal tax credits to an applicant, the executive director shall notify the applicant of the federal credit reservation by issuing a commitment letter which shall outline any terms and conditions imposed with respect thereto. Notice to the applicant shall state that the executive director reserves the right to withdraw the reservation, in order to award it to another project and prevent its being lost, in the event the applicant is unable to maintain development progress according to the development schedule submitted as part of the application.

(e) If the board determines to defer an application for a reservation of federal tax credits, such application shall remain active. If the board determines to disapprove an application, such application shall be considered null and void. The executive director shall provide a written notice to applicants whose applications have been deferred or disapproved within ten days of such decision. Deferred applications may be brought back before the board as determined by the executive director but such applications shall become null and void at the end of each calendar year if not brought back before the board for further action. Applicants whose applications have been deferred by board action shall be notified within seven days of their applications being reheard before the board and within ten days of

the end of the calendar year if such applications have not been reheard and have therefore become null and void.

(f) When a federal credit reservation is approved, the executive director shall require the applicant to make a good faith deposit with the corporation of an amount equal to ten per cent of the federal tax credit reserved to assure that the applicant will comply with all requirements under the Code and these rules for allocation of the federal tax credits. Upon allocation of the federal tax credits, a portion of the ten per cent good faith deposit shall be retained by the corporation as an administrative fee and the remainder refunded. The amount of the administrative fee to be retained shall be established each calendar year effective January 1.

Upon the cancellation by applicant or withdrawal by executive director of a tax credit reservation, applicant is entitled to a refund of the good faith deposit less the corporation's administrative fee provided that the credits withdrawn or canceled are reserved for another project. No deposits shall be refunded other than as provided in this paragraph.

[Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15)
(Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-11 Withdrawals, amendments, and cancellations. (a) An applicant may withdraw or amend an application for federal credit reservations prior to receiving a reservation from the corporation, or may cancel a reservation or an allocation after award, by submitting to the corporation on such forms as the executive director shall prescribe a notice, as applicable, of withdrawal, amendment, or cancellation.

(b) Prior to the issuance of a federal credit reservation, an applicant may make a request to the corporation for an increase in the amount of credits because of an increase in the number of low income housing units or in the amount of floor space of the low income housing units, provided that any such request for additional credits shall include any documentation as may be required by the corporation in order to determine that the applicant will be entitled to such additional federal credits under the Code and these rules.

(c) After a federal credit reservation has been made, an applicant desiring to increase the amount of credits because of an increase in the qualified basis must reapply to the corporation in accordance with section 15-313-8 and such application will be considered on the same basis as other applicants for any available credits.

(d) In the event of a cancellation of a federal credit reservation or an allocation by the applicant, or the withdrawal of federal credit reservations by the executive director, available federal tax credits may be reallocated to other qualified applicants in accordance with the provisions of these rules.

[Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15)
(Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-12 Issuance of tax credit certificates.

(a) When the low income housing units in a project are placed in service, the applicant shall so advise the corporation, and shall request in writing on such forms as the executive director shall prescribe the issuance of any tax credit certificates for which federal credit reservations have been made pursuant to these rules, and shall submit such revised eligibility determinations, calculations, certifications, legal and accounting opinions and any other documentation (including evidence that the low income housing units will be occupied within the time period required by the Code) as the executive director may require in

order to determine whether or not the applicant is entitled to the credits under the Code and these rules. The corporation shall conduct a final evaluation of the project no earlier than thirty days prior to the issuance of the tax credit certificate to determine the project's eligibility under the Code. In addition, such final evaluation shall ascertain the amount of tax credits required for the feasibility of the project.

(b) If the executive director determines that the applicant is entitled to the amount of federal tax credits reserved, the executive director shall allocate the credits accordingly and a tax credit certificate shall be issued to the applicant in accordance with the requirements of the Code.

(c) If the executive director determines that the applicant is not entitled to all or any portion of the credits, the executive director shall allocate credits in an amount which does not exceed the amount of credits for which the applicant is entitled and the applicant shall be so notified. Federal tax credits reserved, or any portion thereof, but not allocated may be reallocated to other qualified applicants in accordance with the provisions of these rules.

(d) A tax credit certificate issued by the corporation will be effective only with respect to a qualified project placed in service during the calendar year for which the tax credit is allocated or in the following year in the event of a carry forward allocation, and only to the extent that the Internal Revenue Service gives effect to the tax credit certificate. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-13 Fees. (a) A non-refundable application fee of \$1,500 shall accompany each application for a reservation of federal tax credits.

(b) The corporation shall levy an annual fee for its administrative expenses in monitoring project compliance with the Code and any other such services. The compliance monitoring fee shall be \$25.00 per unit per year for all project units excluding managers units. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

§15-313-14 Compliance with federal requirements.

(a) Applicants who are awarded tax credit certificates must comply with reporting and other requirements of the Code and the United States Treasury Department.

(b) The corporation shall monitor projects which have been allocated tax credits to ensure compliance with all applicable federal requirements for the term of the compliance period. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15; 26 U.S.C. 42(h)(3)(c); 52 Fed. Reg. 23433 §1.42-1T)

SUBCHAPTER 3

STATE LOW INCOME HOUSING TAX CREDITS

§15-313-18 Designation of corporation. The corporation has been designated to administer the state low income housing tax credit and shall allocate for each calendar year credits in accordance with this subchapter. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15)

§15-313-19 Determination of State's aggregate housing credit dollar amount. The State's annual aggregate housing credit dollar amount shall be equal to the State's housing credit ceiling for such year. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15)

§15-313-20 General. (a) The state low income housing tax credit shall be fifty per cent of the applicable percentage of the qualified basis of each project located in the State. Applicable percentages shall be calculated as provided in section 42(b) of the Code.

(b) The aggregate amount of the state tax credits allocated within any calendar year within the State may not exceed the State's aggregate housing credit dollar amount for that year.

(c) An amount equal to ten per cent of the state aggregate housing credit dollar amount shall be set aside for qualified non-profit organizations. Additional credits may be reserved or allocated to qualified non-profit organizations from the State's remaining allocation but only after such set-aside amount has been exhausted.

(d) State tax credit allocations are counted against the state aggregate housing credit dollar amount for the calendar year in which the credits are allocated.

(e) Credits may not be allocated before the calendar year in which the subject project is placed in service; however, the corporation will accept, review and approve applications for reservations of state tax credits according to the rules set forth in this subchapter.

(f) The corporation need not allocate the maximum credit amount for which an applicant otherwise qualifies under Chapter 235, HRS. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §§201H-15, 235-110.8)

§15-313-21 Application, reservation and allocation of credit. (a) The rules set forth in subchapter 2 of these rules shall apply to the application, selection of applications for state credit reservations, and allocation of credits available under this subchapter except:

- (1) Applicants applying for both the state and federal credit need only submit a single processing fee.
- (2) An applicant must receive a reservation of federal tax credits to be eligible to receive a state tax credit reservation; and
- (3) In order to qualify for consideration to receive a reservation of state tax credits under this subchapter, the executive director must first determine that an applicant is likely to qualify to claim the federal income tax low income housing tax credit.

(b) In recommending projects for state credit reservations, and in awarding state credit reservations, under this subchapter, the executive director or the board, as the case may be, need not weigh the factors in section 15-313-10 in the identical manner as such factors were weighed in determining an applicant's allocation of federal tax credits. In considering applications for state tax credits, the executive director and the board may also consider the amount of federal credit that has been reserved for such applicant in order that the corporation may award available state tax credit incentives so as to maximize the number and quality of low income housing units.

(c) A tax credit certificate issued by the corporation under this subchapter will be effective only with respect to a qualified project placed in service during the calendar year for which the tax credit is allocated and only to the extent that the state department of taxation gives effect to the tax credit certificate. [Eff **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15) (Imp: HRS §201H-15)

§15-313-22

§15-313-22 Compliance with state requirements.
Applicants who are awarded tax credit certificates
must comply with reporting and other requirements of
the state department of taxation. [Eff 10/25/99; am
and comp **APR 23 2010**] (Auth: HRS §§201H-4, 201H-15)
(Imp: HRS §201H-15)

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII

CHAPTER 168

LOW INCOME HOUSING TAX CREDIT PROGRAM

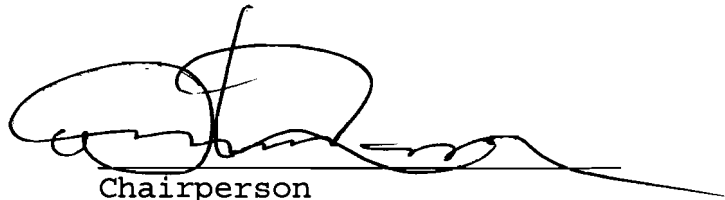
Repealed

§§15-168-1 to 15-168-22 Repealed. [R APR 23 2010]

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

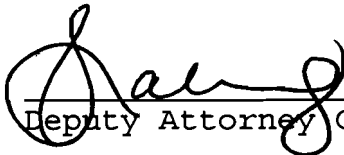
The repeal of chapter 15-168 and the adoption of chapter 15-313, Hawaii Administrative Rules, on the Summary Page dated April 8, were adopted on April 8, 2010, following public hearings held on March 29, 2010 after public notice was given in the Honolulu Star-Bulletin, The Garden Island, The Maui Times, West Hawaii Today, The Hawaii Tribune-Herald, and Honolulu Advertiser newspapers on February 27, 2010.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.



Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:



LINDA LINGLE
Governor
State of Hawaii

Dated: _____

Filed

10 APR 14 10:45

LEONARD GOVERNOR'S
OFFICE

